IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1070 OF 1997

Central Railway Employees' Co-operative Credit Society Limited, a Society deemed to be registered under the Multi-State Co-operative Societies Act, 1984, having its office at 65-A, N.M. Joshi Marg, Near Byculla Railway Station, Byculla, Mumbai8 – 400 027	]	Petitioners

Vs.

1 Central Railway Employees Co-operative Credit Society Employees' Union, a Trade Union registered under the Trade Union Act, 1926 and having its office at C/o Central Railway Employees' Co-operative Credit Society Limited 65-A, N.M. Joshi Marg, Byculla, Mumbai – 400 027	]	Respondents
2 G.R. Baviskar, Member, Industrial Court, Mumbai having his office at Arun Chambers, 7th Floor, Tardeo, Mumbai – 400 -034	]	

Mr. K.S. Bapat alongwith Mr. Jayesh Desai and Mr. T.R. Yadav, Advocate for the Petitioner.

Mr. A.V. Bukhari, Senior Advocate alongwith Mr. B.V. Bukhari for the Respondents.

WITH
WRIT PETITION NO.1704 OF 1999

Central Railway Employees Co-operative]
Credit Society Employees' Union,]
a Trade Union registered under the Trade]
Union Act, 1926 and having its office at]
C/o Central Railway Employees']
Co-operative Credit Society Limited]
65-A, N.M. Joshi Marg,]
Byculla, Mumbai – 400 027] Petitioner

Vs.

Central Railway Employees' Co-operative]
Credit Society Limited,]
a Society registered under the]
Multi-State Co-operative Societies]
Act, 1984, having its registered office at]
65-A, N.M. Joshi Marg,]
Byculla, Mumbai – 400 027] Respondent

....

Mr. A.V. Bukhari, Senior Advocate alongwith Mr. B.V. Bukhari for the Petitioners.

Mr. K.S. Bapat alongwith Mr. Jayesh Desai and Mr. T.R. Yadav, Advocate for the Respondent.

.....

Coram : Smt. R.P. SondurBaldota, J.
Date : 29th January, 2015.

JUDGMENT :

1 Both the above petitions challenge the same order i.e. the order dtd. 20th June, 1996 passed by the Industrial Court in Complaint (ULP) No. 1175 of 1987. The first petition is filed by the Employer, Central Railway Employees Co-operative Credit Society Limited and the second petition is filed by the Union, Central Railway Employees Co-operative Credit Society Employees Union. The impugned order partly allows the complaint filed by the Union alleging unfair labour practice under Section 28(1) read with Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU and PULP Act" for short) and gives several directions to the Employer.

2 The Employer is a Co-operative Credit Society of the employees of the Central Railway and is registered under the provisions of Multi-State Co-operative Societies Act, 1984. The Union is registered under the Trade Unions Act and represents some of the employees of the employer.

3 Until 1st April, 1970, the employees were getting pay-scales and other service conditions as applicable to the Central Railway

employees. Thereafter the same became different on account of settlements dtd.15th January, 1971 for Class III and Class IV employees and dtd. 16th August, 1971 for the other employees. The settlement was for a period of three years w.e.f. 1st April, 1970. By the next settlement dtd. 4th November, 1977, however, the parties reverted to the pay-scales and service conditions, as applicable to the Central Railway employees. It was agreed thereunder that scales of pay and allowances recommended by the 3rd Pay Commission appointed by the Central Government and as accepted by the Railway Administration would be made applicable to the employees of the employer. For the purpose of giving effect to that settlement, pay of the employees as on 1st April, 1970 in the relevant scale was ascertained and by notional yearly increments to that pay, the pay of the employees as on 1st April, 1973 was determined. On the basis of such pay determined, the effect of the revision in the pay-scale as per the settlement dtd. 4th November, 1977 was given to the employees.

4 By the next settlement dated 30th November, 1981 the pay-scales and service conditions of the employees were again severed from those of the employees of Railway Administration though not completely. Clause 15 of the settlement ensured that connection is retained for future events. Clause 15 reads as follows:

> XI. "It is also agreed that any revision change, increase or decrease announced by the Railway

> Administration in the basis/ pattern/treatment of pay-scales and allowances for Railwaymen from time to time will *ipso facto* effective in respect of pay-scales and allowances awarded under this agreement to the Society's staff.”

5 In September, 1986, the 4th Pay Commission recommendations were accepted by the Central Railway Administration and given effect to from 1st January, 1986. The employer decided to give effect to the same to it's employees in terms of Clause 15 above. As the pay-scales of the employees at the relevant time were distinct and different from the pay-scales of the corresponding categories of employees of Railway administration, the employer in the exercise, similar to the year 1971, fixed the pay-scales of the employees on the basis of the pay drawn by them as on 31st March, 1980 and by giving them notional increments from 1st April, 1980 to 31st December, 1985. By the letter dtd.21st October, 1987, it communicated the decision to the Union. As a result of restructuring of the pay-scales, every employee of the employer became upgraded and received substantial benefits. As done by the Railway Administration, the employer also merged a portion of dearness allowance into additional dearness allowance and interim relief in the basic pay and decided new basic pay as per the 4th Pay Commission's recommendations. The total amount disbursed by the employer to all the employees by way of benefits of 4th Pay Commission was about Rs.32.00 lacs. The upgradation consisted of 17 Office Superintendents

in the place of one, 34 Heads of Section in place of seven, 101 Sub-Heads of Section in the place of 23 and 118 Senior Clerks in the place of Nil. The 4th Pay Commission involved increase in the working hours from 36½ hours per week to 40 hours per week. As a result, no overtime allowance was available for the work done beyond 36½ hours to 40 hours.

6. The Railway Administration under the specific rules framed by it, provides certain additional facilities partly by way of concession to it's employees like card/cheque passes and privilege ticket (PTO) to enable them to take long distance travel. On revision of the pay-scales pursuant to the 4th Pay Commission, the Railway Administration had revised the limits of pay for issue of cheque-passes, PTO and sub-urban passes. By it's letter dtd. 31st December, 1987, the Railway Administration informed the employer that the pay limits revised for Railway employees would equally apply to the employees of the employer, for the purpose of entitlement of passes and PTO.

7 The Union felt aggrieved by the manner of implementation of recommendations of 4th Pay Commission as accepted by Railway Administration and on 18th December, 1987 filed a complaint. In the complaint, the Union alleged that fitment of the pay-scale done by the employer for implementation of 4th Pay Commission, though resulted into a marginal overall increase in the wages of the employees, due to addition of House Rent Allowance (HRA), in effect reduced their basic

salary and the Dearness Allowance (D.A.). Such fitment and adjustment of the salary was contrary to the settlement dtd. 30th November, 1981 and was prejudicial to the employees. There were disputes raised about other facilities also. Until the year 1957-1958, the employer was giving facilities of card passes and cheque-passes as extended by the Railway Administration to it's employees. When the facility was withdrawn by the Railway Administration in the year 1957-1958, the employer started paying Quarterly Season Ticket fares (QST fare) for first class and second class of the local train journey to the employees, depending upon their basic salary. The cheque-passes issued were for yearly outstation/ long journey within India. The first class cheque-passes were being issued to employees having basic-pay of Rs.515/- or more and second cheque-passes being issued to all other employees. For this, the employer does not have to incur any liability as it is a facility provided by Railway Administration/Board. By the office order dtd. 31st July, 1987, the employer made the first class cheque-passes available to such employees, whose maximum basic salary of the grade in which they were placed was more than Rs.700/- irrespective of the basic salary drawn by him at the relevant time. Further only those employees, who are placed in the scale where the minimum basic salary was Rs.650/- irrespective of the basic salary drawn by them at the relevant time were made eligible for the first class QST fares. The Union alleged that introduction of such new eligibility criteria was prejudicial to the employees. Because the pay-scales made applicable after fitment to the employees did not have the scale existing with starting basic as Rs.650/- per month or maximum basic pay of more than 700/- per month for issuance of cheque-passes. The highest scale amongst the employees was starting with basic salary of Rs.550/- and the other terminal basic salary of Rs.700/-. According to the Union, the reduction in the benefits was a change brought about without issuing a notice of change as required under Section 9A of the Industrial Disputes Act.

8 According to the Union, several meetings had been held with the employer for withdrawal of the Circular and proper fitment of the employees for making recommendations of the 4th Pay Commission as accepted by the Railway Administration available to them. The employer, however failed to withdraw the circular or alter the fitment. On 1st December, 1987, the employer directed the office to calculate the wages of the employees on the basis of fitment in the 3rd Pay Commission's scales ignoring the subsequent settlement and for consequent fitment in the scales of 4th Pay Commission resulting into the complaint by the Union. The directions sought in the complaint by the Union against the employer were :

(i) withdraw the circular dtd. 31st July, 1987;

(ii) direct the employer to extend the benefits of first class cheque-passes and QST fares to the employees, as entitled to them earlier.

(iii) to restrain the employer from implementing the recommendations of the 4th Pay Commission in a manner prejudicial to the employees than what was demanded by them in their representation.

9 The employer opposed the application denying that it had refused to implement the settlement and contended that the mode of fitment used by it was the same as that used while implementing recommendations of 3rd Pay Commission. As per Clause II (ii) of the settlement dtd. 4th November, 1977, the pay of the employees on 1st April, 1973 was to be ascertained by basing it on the pay in the Central Railway scales of pay and the wages paid to the employees prior to 1st April, 1970 and by adding notional yearly increment to that pay. On 30th November, 1981, one more settlement was entered into with the Union, revising the pay-scales w.e.f. 1st April, 1980. The payment of the employees as on 1st April, 1973 was ascertained and effect of the pay-scales revised under the Settlement dtd.4th November, 1977 was given, thereby treating the settlements dtd. 15th January, 1971 and 16th August, 1971 as non- existent. On 30th November, 1981, one more settlement was entered into with the Union, under which the pay-scales of the employees were again revised w.e.f. 1st April, 1980. As per Clause 15 thereof, any revision, change, increase or decrease announcements by the Railway Administration in the basis/pattern/ treatment of the pay-scales and allowances for Railwaymen from time to time were to be *ifso facto* made effective in respect of pay-scales and allowances of the employees. In September, 1986, the Central Railway announced acceptance of the 4th Pay Commission for the Central Government employees. The acceptance was to be effective from 1st

January, 1986. The revision of the pay-scales under the 4th Pay Commission was announced on the basis of pay-scales under 3rd Pay Commission. Therefore, the Board of Directors of the employer decided to grant the same revision or the same increase to the employees in terms of Clause 15 of the settlement dtd. 30th November, 1981. Since the pay-scales enjoyed by the employees at the relevant time were as per settlement dtd.30th November, 1981, which were distinct from the pay-scales of the Railway employees, the Board of Directors decided to fix pay-scales of the employees on the pay, that they were drawing on 31st March, 1980 and by giving notional increments from 1st April, 1980 to 31st December, 1985. In respect of the employees, which were stagnated under the 3rd Pay Commission, the additional increments as per the Railway Rules and as recommended by 4th Pay Commission were sanctioned. Thus, the stand of the employer was that it had acted in accordance with the settlement dtd. 30th November, 1981. It is claim of the employer that the employees have in fact benefited, not just in terms of the wages, but also in terms of various posts made available to the employees. Besides, according to the employer, it has already implemented the pay-scales in the same manner to four of it branches at Bhusawal, Jabalpur and Jhansi.

10 The Industrial Court, by the impugned judgment and order held that the Union had failed to establish that Circular dtd.31st July, 1987 is illegal and invalid. It however, held that the order of the

employer about the seniority, transfer or re-transfer of the employees was not legal. As such, it held that the employer had engaged in unfair labour practices under Item 9, Schedule IV of MRTU & PULP Act and by violating the provisions of Section 9A of the Industrial Disputes Act. It directed the employer to refund the amounts deducted from the salary of the employees or recovered on account of stoppage of fixed D.A. @Rs.60/- per month, Medical Allowances @Rs.40/- per month and directed to continue to pay the two allowances until fresh settlement was arrived in the place of settlement dtd. 30th November, 1981. The next direction was to promote the seniors from Mumbai office, as per their seniority and w.e.f. 1st January, 1986 with further directions to maintain the seniority list w.e.f. 1st January, 1986 for the promotees from Mumbai office and the juniors previously promoted from other branches were treated as juniors in the list. As regards the QST and cheque-passes, the employer was directed to continue the facilities as per the entitlement and in accordance with the rules of the Railway Administration.

11. During pendency of Complaint (ULP) No. 1175 of 1987, there were some more complaints as also applications for interim reliefs by the Union. After filing of Complaint ULP, the Union had applied for interim reliefs and by the ad-interim order dated 22nd December, 1987, the employer was directed not to implement the 4th Pay Commission recommendations till further orders. Later, by the order dated 11th October, 1988 the employer was asked to implement the

recommendations. The Industrial Court, however, did not go into the question of the method to be adopted for the implementation. The Union then sought review of the order dated 11th October, 1988. The review application was heard and certain directions as regards the persons in respect of whom the recommendations were to be implemented were given by the order dated 26th October, 1988.

12. In the month of September, 1987 the Union submitted a Charter of Demand relating to implementation of recommendations of the 4th Pay Commission in terms of Clause-15 above. On failure of conciliation, the State Government referred the dispute for adjudication to the Industrial Court vide Reference I.T. No. 8 of 1990. The Union, however, failed to attend to the reference. Consequently, it came to be dismissed for want of prosecution. Similarly, the Union had filed Complaint (ULP) No. 435 of 1990 to challenge restructuring, transfer and promotions by the employer. The complaint resulted into settlement dated 6th February, 1992 about the promotions. In view of the settlement, the Union did not prosecute the complaint and the same was disposed off by the Industrial Court by its order dated 24th February, 1992. Similarly, the dispute as regards stoppage of fixed Dearness Allowance at the rate of Rs.60/- per month and medical allowances at the rate of Rs.40/- per month, there were representations made by the Union, on consideration of which, the employer agreed to restore the allowances and payments accordingly have been made. Once the dispute relating to the promotions was

resolved, the employer issued office note dated 11th November, 1994 for the written test for promotion to the post of Office Superintendent.

13. In the year 1988, the employees formed another Union called "Employees Co-operative Credit Society Workers Union". That Union is the largest Union, having members throughout all the branches of the employer all over Central Railway. That Union submitted a Charter of Demands dated 5th January, 1989. The employer held negotiations with that Union and arrived at settlement on 17th October, 1989 superseding all the earlier settlements. The benefits of this settlement were also offered to the members of the Union, but they refused to accept the same and decided to pursue Reference I.T. No. 8 of 1990, which was pending at the relevant time.

14. From the above narration, about which there is hardly any controversy, it can be seen that the disputes as regards the transfer in promotions, continuation of payment of fixed Dearness Allowance and medical allowance etc. stand resolved.

15. It has been the the contention of the petitioner that, the benefits of the 4th Pay Commission recommendations had been extended by the employer to all the employees irrespective of their Union affiliation and the members of the Union have accepted the benefits including the employees who signed the complaints on the basis of restructuring. It is also the case of the employer that, the

Union is a minority Union having negligible membership and its members are only the employees from Bombay. In the circumstances, the Industrial Court could not have held the employee guilty of commission of unfair labour practice under Item-9 of Schedule-IV of the MRTU & PULP Act or violation of Section 9A of the Industrial Disputes Act ("I.D. Act" for short).

16. Mr. Bapat, the learned Advocate appearing for the petitioner, in the first petition, submits that the employer had extended the benefits of recommendations of the 4th Pay Commission as accepted by the railway administration to the employees in terms of Clause-15 of the settlement dated 30th November, 1981. It is his argument that, considering the nature of Clause-15, the only obligation of the employer was to extend the benefits of the 4th Pay Commission as available to the employees of the railway administration as per the recommendations of the 4th Pay Commission and as accepted by the railway administration. He points out that, it is not the case of the Union that, its members are not getting basic pay scale and other facilities as per the recommendations of the 4th Pay Commission applicable to the railway employees. Thus, the employees have accepted the benefits of 4th Pay Commission and have even been promoted on the basis of restructuring brought about by the petitioner to implement recommendations of the 4th Pay Commission. Mr. Bapat also submits that, the Industrial Court ought not to have entertained the complaint as a reference was already raised and the matter was

referred for adjudication by the appropriate Government prior to filing of the complaint and the same reference was not pursued by the union and therefore the complaint was hit by the provisions analogous to *res-judicata*.

17. As regards the allegations of unfair labour practice under Item-9 of Schedule-IV of MRTU & PULP Act, the Industrial Court has disbelieved the same, holding that there is no breach of any settlement or agreement by the petitioner. The essential allegations on the breach were that while fixing pay scale of the employees for extending benefits of the 4th Pay Commission, the petitioner had considered the salary drawn by the employees as on 1st April, 1980 and added notional increments thereto upto December, 1985. This exercise, according to the respondents, was illegal and the pay scales of the employees fixed as per the earlier settlement could not have been altered by the petitioner. The Industrial Tribunal rejected the allegations for the following reasons :-

> “. The statement of revision of pay scale is based on notification dated 19th Sept. 1986 of Railway Board. Once it is agreed the base of increase or decrease in pay and allowance it will be at par with Railwaymen then there is no

substance in submission that there is non implementation of Clause. XV of agreement 1981. The learned Counsel Smt. Pushpa Menon argues that the respondent adopted the base of III Pay Commission and adding notional increment from 1.4.1980 to December, 1985 the revision of IV Pay Commission is applied. The action amounts unfair labour practices under item 9 as the Respondent threatened that the agreement 1981 is not exist. I do not agree with this submission as I discussed above that the base in revision increase and decreases in Pay and allowances will be as per Railwaymen as agreed in the agreement of 1981 as per clause IV while applying this method if the basic pay goes to the similar to III Pay Commission. It does not unfair labour practices under item 9 as there is no breach of agreement."

18. Mr. Bukhari, the learned Advocate appearing for the respondent submits that, the Industrial Court could not have ignored the revision in the pay scale introduced by the settlement dated 30th November, 1981 while applying the 4th Pay Commission recommendations and fixed the pay scale of the employees on the salary drawn on 1st April, 1980. According to him, the similar exercise done earlier at the time of implementation of the 3rd Pay Commission cannot be said to be legal

and therefore could not have been repeated by the petitioner while implementing the recommendations of the 4th Pay Commission. It is also submitted that, the earlier agreement being with another Union, cannot bind the petitioner. Mr. Bukhari argues that the pay scale received by the employees under the revision of 1981 was required to be protected and therefore the action of the petitioner was arbitrary and its policy unreasonable.

19. Mr. Bapat, appearing for the petitioner seeks to justify the observations and the findings of the Industrial Court by submitting that service conditions/pay scales had to be kept by the petitioner identical to that of railway employees in view of Clause-15 of the settlement in question.

20. Clause-15 of the settlement of 1981 lays down that any increase or decrease in the basic pattern of the pay scales of central railway employees would be applied ipso-facto to the pay scales and allowances of the employees of the petitioner. The Industrial Court has accepted that, Clause-15 has been rightly applied by the petitioner

for effecting the fitment. No fault can be found with such fitment by the petitioner because under identical circumstances in the past, pay scales had been similarly fixed for grant of recommendations under the 3rd Pay Commission. No dispute had been raised by anybody at the relevant time and the benefits are enjoyed by all. Besides, considering the language of Clause-15, the exercise of fitment as undertaken by the petitioner had to be done so as to extend the benefits under the 4th Pay Commission to the employees. The respondents cannot conveniently disown the earlier exercise in such manner. Therefore, in my opinion, the Industrial Court was correct in holding that, there was no unfair labour practice as alleged to by the petitioner under Item-9.

21. As regards violation of Section 9A of the I.D. Act i.e. of effecting change in the conditions of service without issuing notice thereof, in my opinion, the same is also without any substance, in view of Clause-15 of the settlement of the year 1981. The benefits of the 4th Pay Commission could not have been extended to the employees without restructuring of the posts held by the employees. Since the agreement in respect thereof, had already been arrived at in the form of Clause-15

of the settlement and any changes that had to be brought in by way of extension of the recommendations of the 4th Pay Commission, would amount to pursuant to the agreement. It is to be noted that, the changes have been strictly in accordance with the 4th Pay Commission recommendations and no unilateral change has been brought in by the petitioner. When the recommendations of the fourth pay commission were to be accepted, they were to be accepted as a whole and not selectively. Besides, as already noted at para-14 above, the disputes as regards promotions, transfers, difference allowances etc. stand resolved in Complaint (ULP) No. 435 of 1990. As has been rightly pointed out by Mr. Bapat, the same could not have been considered again by the Industrial Court.

22. In the circumstances, Writ Petition No. 1070 of 1997 filed by the employer is allowed and the order dated 20th June, 1996 passed in Complaint (ULP) No. 1175 of 1987 passed by the Industrial Court at Mumbai is set aside. Complaint (ULP) No. 1175 of 1987 is dismissed. Writ Petition No. 1704 of 1999, filed by the employee is dismissed. It is clarified that, this order shall not affect any of the subsequent

settlements arrived at between the parties as regards various allowances etc.

(Smt. R.P. SondurBaldota, J.)